

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION MADE
UNDER SECTION 108A OF THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 1992**

MR S CARABINE

v

**COMMUNICATION WORKERS UNION
(No2)**

Date of Decision: **26 February 2009**

DECISION

Upon application by Mr Carabine (“the Claimant”) under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”).

I refuse the Claimant’s application for a declaration that on or around 6 March 2008 the Communication Workers Union breached rule 4.1(5) of its rules by suspending the election in its Northern Ireland No1 Branch for Unit Representative, Belfast North and West Delivery Office and not allowing Mr Carabine’s nomination for the position to go forward.

REASONS

1. Mr Carabine is a member of the Communication Workers Union (“the Union”, or “the CWU”). By an application dated 1 June 2008 and received in the Certification Office on 4 June 2008, Mr Carabine made allegations against his Union arising from his intention to stand for election for the position of Unit Representative for the Belfast North and West Delivery Office (“DO”) in the Union’s Northern Ireland No1 Branch. Mr Carabine confirmed his complaint in the following terms:-

“that on or around 6 March 2008, by a notice dated 27 February 2008 suspending the election in the CWU Northern Ireland No1 Branch for Unit Representative and Deputy Unit Representative, Belfast North and West DO, the Union acted in breach of Rule 4.1.5 of the rules of the Union by suspending the election and not allowing Mr Carabine’s nomination for the position to go forward”

2. I investigated the alleged breach in correspondence. A hearing took place on 13 February 2009. At the hearing, Mr Carabine was represented by Mr D Rafferty of the Belfast Unemployed Resource Centre. Mr Carabine did not give evidence. Witness statements from Mr Gardiner and Mr Davey were tendered on behalf of

the Claimant. The Union was represented by Ms J Parker of Simpson Millar solicitors. Mr O'Hara, a former President of the Union, and Mr Bowman, the current President, attended and gave evidence and each provided a witness statement. A 277 page bundle of papers was prepared for the hearing by my office containing documents submitted by the parties, including the rules of the Union. At the hearing this was supplemented by a further document submitted on behalf of the Claimant. I refused to admit a document submitted by the Union on the grounds that it had been submitted out of time with no reasonable explanation and did not address a central issue in the case. The Union submitted a written skeleton argument.

Findings of Fact

3. Having considered the oral and documentary evidence and the submissions of the parties I find the facts to be as follows:-
4. Mr Carabine is a delivery postman employed by Royal Mail at its office in Tomb Street, Belfast. He has been a member of the Union (or its predecessors) since 1986 and has held a variety of local offices since about 2001. He has served as a unit representative, Deputy Branch Secretary and Branch Treasurer. He resigned from his positions in 2006 and did not stand in the 2006-2007 branch elections.
5. The rules of the Union provide that it shall be divided into branches constituted under the authority of the National Executive Council ("NEC") and subject to the Branch Model Constitution. There are about 155 branches throughout the UK. The rules of a branch must be based upon the Branch Model Constitution, some rules of which are mandatory. Any variations from the Model Constitution must be approved by the NEC.
6. The Northern Ireland No1 Branch has about 1,600 members. It is the largest CWU branch in Northern Ireland, but not in the UK. As required, the rules of the Northern Ireland No1 Branch provide for a certain number of branch officers, such as Chairman, Secretary and Treasurer. Branch rule 7 provides for a branch committee which is to be composed of certain ex-officio members, the branch officers and certain representatives from Sections. Branch rule 21 deals with Sections. They are essentially the different businesses in which the members of that particular branch may be employed. In the case of the Northern Ireland No1 Branch there were three Sections, in addition to retired members. They were Royal Mail, Parcelforce and Counters. Branch rule 21 provides for the election of a Section Chair and Secretary. Branch rule 23 provides for a Section committee, which is to be comprised of the Section Chair and Secretary together with elected lay members of the Section.
7. The CWU and Royal Mail have negotiated a collective agreement which is known as the Industrial Relations Framework. This provides for arrangements between the two parties at local, area and divisional level. Section 1.5 of this agreement describes the role of local, area and divisional CWU representatives. It was agreed at the hearing that the local representatives described in the framework agreement are the same as the Section lay representatives provided for in branch rule 23. The

Union has about 2,000 local representatives throughout the UK and about 28 in the Northern Ireland No1 Branch.

8. There is no provision within the Rules of the Union or the Northern Ireland No1 Branch which determines the length of office of a unit or section lay representative. The Union has stated that the period of office for such work place representatives is normally 12 months. Mr Carabine stated that in his experience of the Northern Ireland No1 Branch, since its formation in 1992, unit representatives have normally been elected for a 12 month period and that was the period for which he held office as a unit representative, except when no elections were held because of particular circumstances, for example, a postal strike. The period of 12 months is also consistent with branch rule 9.5 which deals with casual vacancies between elections. This rule is headed "Positions Vacant between AGMs", implying that elections are held annually. Accordingly, if it were necessary for this decision, I would find that there is to be implied into the rules of the Northern Ireland No1 Branch a provision that the period of office of Section lay representatives is 12 months unless that period is extended for good reason by the NEC or branch committee in the reasonable exercise of its discretion.
9. I now turn to the events which gave rise to Mr Carabine's complaint. I accept the Union's evidence that, following the branch elections in 2006, the Northern Ireland No1 Branch found itself in considerable disarray. The branch had not functioned well for some time but matters came to a head in November 2006 when a member's partner allegedly received threats from a paramilitary organisation because of that member's trade union activities. There were other allegations of threats, counter-threats, intimidation and bullying, which have been described by the General Secretary as "internecine warfare". There had been a succession of branch officers. The effect on members is evidenced by the fact that there were three failed attempts to hold a quorate AGM in 2006-2007. The seriousness of the situation is illustrated by the General Secretary having considered it necessary to hold discussions on the matter with the Chief Constable of the Police Service of Northern Ireland, and to involve the Northern Ireland Human Rights and Equality Commission.
10. Against this background, a motion was put to the Northern Ireland No1 Branch committee on 15 June 2007 seeking to suspend the branch. The motion proposed that the unit representatives currently in office should remain in office for the duration of any such suspension. However, the motion was not voted upon as the meeting was inquorate. Shortly afterwards, the Branch Officers met with the General Secretary at the Union's Annual Conference and requested the intervention of the Union's Head Office by suspending the branch. The Union had never before suspended a Branch, but the General Secretary considered that the circumstances of the Northern Ireland No1 Branch were unique and that suspension was appropriate. He prepared a report for the NEC which was adopted by it on 25 July 2007. In adopting this report, the NEC agreed to suspend the branch; for the branch to be administered from CWU Headquarters ("HQ"); and for any necessary structural changes to be made to the branch to enable it to function effectively in the future. The General Secretary appointed Mr Pat O'Hara, a former President of the Union, to carry out the job of running the branch on behalf of CWU HQ, reporting directly to the General Secretary. Mr O'Hara would

work from the branch office in Donegall Street, Belfast. In addition, Mr John Holmes was appointed to investigate the problems facing the branch and devise a way forward.

11. On 30 July 2007, the General Secretary sent a circular to all members of the Northern Ireland No1 Branch in which he advised them that their branch was to be administered from CWU HQ for the foreseeable future. He also stated that "*This decision means that the industrial relations representatives at work place level will continue to fulfil their roles as normal. However the previously elected central committee and Officers of the Branch will no longer hold office and the key roles of Secretary and Chair will be carried out by a representative of CWU Headquarters reporting directly to the General Secretary*". The intention was that members would still have available to them the normal services of their lay representatives for such matters as grievances, disciplinary issues, individual cases and local negotiations. In addition, the Branch Treasurer continued to occupy his position in order to maintain the accounts of the branch whilst it was in suspension, receiving payments from, and making payments to, members.
12. In January 2008, the General Secretary issued a further circular to members of the branch in which he reported on the difficulties that Mr O'Hara and the NEC had encountered. He stated that it was hoped to restore local autonomy to the branch by 31 July. By a further circular dated 14 February 2008, the General Secretary reported on a constructive meeting of the former members of the branch committee that had been held on 12 February and that a working party had been established.
13. Against this background, Mr Carabine sent an email to Mr O'Hara on Friday, 22 February 2008 in which he stated, "*I would be obliged if you would advertise the position of Unit Rep for Belfast North and West. It has been some 20 months since an election within this unit, which is well over the timescales of every 12 months*". Mr O'Hara responded on Monday, 25 February agreeing to do so. However, I accept Mr O'Hara's evidence that this agreement was based on a misunderstanding. Mr O'Hara was aware that the last elections for unit representatives had been in June 2006 and that, in normal circumstances, all 28 or so unit representatives should have been subject to re-election in June 2007. His understanding of the effect of the suspension of the branch by the NEC was that there would be no elections for positions within the branch during the period of suspension, other than where it became necessary to fill casual vacancies for unit representatives, as had occurred in the case of the Antrim DO and the Belfast East DO. Mr O'Hara gave evidence that he had mistakenly thought Mr Carabine was alerting him to such a casual vacancy. He prepared a notice dated 27 February calling for nominations and sent it to the Tomb Street offices to be displayed. Mr Carabine has stated that the notice was put up on Saturday, 1 March and first seen by him on Monday, 3 March. On Wednesday, 5 March, Mr Carabine submitted his nomination for the position by registered post to the branch office in Donegall Street, Belfast. In the meantime, however, the incumbent unit representative for the Belfast North and West DO, Mr Martin, had protested to Mr O'Hara about his position having been made subject to election. Mr O'Hara then realised that there was no casual vacancy and decided to cancel the election he had called. Mr O'Hara prepared another notice which stated that the election was suspended and that there would be no elections held until he had conducted a

review. That notice is also dated 27 February but I accept Mr O'Hara's evidence that this was a further error. In preparing this notice, he had failed to "cut and paste" correctly from the previous notice that he had prepared on his computer and had erroneously retained the previous date. Mr O'Hara sent this second notice to the office in Tomb Street where Mr Carabine says it appeared on Thursday, 6 March. Mr Carabine immediately complained to Mr O'Hara, who responded on 10 March stating that when he had agreed to hold the election as requested, he had wrongly assumed there to be have been a vacancy. Mr O'Hara denies having ever received Mr Carabine's nomination dated 5 March or having been aware of his nomination at the time he suspended the election.

14. The General Secretary sent a further circular to branch members on 9 April 2008, enclosing a copy of Mr Holmes' report and stating that in future it would be a requirement for holding office as a branch officer or representative that the person must have undertaken equality and diversity training.
15. Mr Carabine commenced his complaint to me by a Registration of Complaint Form dated 1 June 2008, received at the Certification Office on 4 June.
16. On 25 September 2008, the General Secretary sent to each member of the Northern Ireland No1 Branch a copy of the branch's new constitution. The branch had been re-named the Northern Ireland Combined Branch. Nominations for the positions of branch officers were invited. The inaugural meeting of the re-named branch occurred on 9 November 2008. Subsequently, nominations for section lay representatives were invited, for which the nomination period closed on 23 January 2009. Mr Carabine is a candidate in those elections.

The Relevant Statutory Provisions

17. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-

Section 108A Right to apply to Certification Officer

- (1) *A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).*
- (2) *The matters are -*
 - (a) *the appointment or election of a person to, or the removal of a person from, any office*
 - (b) - (e)

The Relevant Union Rules

18. The Rules of the Union which are relevant for the purpose of this application are as follows:-

NATIONAL RULES

Rule 4 Members Entitlements and Obligations

1. *Members of the Union are entitled to:*
 - (5) *stand for Union office in accordance with the Rules and Branch Constitution*

Rule6 Branches

1. General

(1) *The Union shall be divided into Branches constituted under the authority of the NEC and subject to the Branch Model Constitution. In exercising this authority the NEC shall have regard to local circumstances, members' wishes and the requirement for an efficient, financially viable organisation.*

3. Branch Constitution

(1) *All Branches shall operate according to the Model Branch Constitution that shall set minimum standards for every Branch. The NEC shall be responsible for publishing the Model Branch Constitution and ensuring its adherence. The Model Branch Constitution shall be mandatory.*

4. Branch Organisation

(1) *Each Branch shall hold an Annual General Meeting by no later than 31st March of each year.*

(2) *Each Branch shall elect not less than: five Branch Officers: Chair; Secretary; Treasurer; Equality Officer; Political Officer; and six other Committee members. The Committee shall perform those tasks defined in the Model Branch Constitution.*

Rule 8 National Organisation

1. National Executive Council (NEC)

(1) *There shall be a NEC responsible for:*
b) the general management and control of the Union between Annual/Special Conferences during which periods it shall have supreme authority on all issues except those which are within the remit of the Industrial Executives.

Rule 9 Officers

2. General Secretary

(2) *The duties of the General Secretary shall include:*
a)....
b) responsibility to the NEC for the supervision and control of the administration of the Union and of the Officers and Staff...
c)...
d) assigning duties and directing the work of all other Officers of the Union...

MODEL RULES OF THE NORTHERN IRELAND NO1 (CWU) BRANCH

5. Management

The affairs of the Branch shall be governed by General Meetings which every member of the Branch shall be entitled to attend. In the intervals between General Meetings the affairs of the Branch shall be directed by the Branch Officers and Branch Committee.

NOTE: This rule is mandatory and must be adopted as printed.

6. Officers

1. *The Branch Officers shall be elected in accordance with the procedures set out in Rule 9 hereof.*

2. *The Branch Officers shall be as follows;*

- (a) Chair*
- (b) Vice-Chair*
- (c) Secretary*

- (d) Deputy Secretary
- (e) Treasurer
- (f) Organiser
- (g) Legal & Medical Secretary
- (h) Editor
- (i) Political Officer
- (j) Equal Opportunities Officer

NOTE: Rule 6.1 is mandatory and must be adopted as printed. Rule 6.2 is mandatory so far as each Branch must have at least a Secretary, Chair and Treasurer and Political Officer. Other posts are optional. The only posts that can be classified as Branch Officers are those that the full Branch membership elect (with the exception of Class C members who do not have voting rights).

The Equal Opportunities Officer should be advertised as a separate post. It is acceptable for the post to be combined with any other Officer responsibilities with the exception of the Political Officer.

All candidates for the post of Political Officer must be members of the Labour Party. There is no debarment of other office holders also being the Political Officer.

7. Branch Committee

1. *The Branch Committee shall consist of,*
 - (a) *Branch Officers listed in Rule 6.2.*
 - (b) *Members of the Branch holding CWU office outside the Branch.*
 - (c) *Representatives from Sections as follows;*
 - Royal Mail Section*
 - Parcelforce Section*
 - Counters and retired Members Section*
 - (d) *Royal Mail Area Representatives*

Those at (b) and (d) will attend in an ex-officio capacity with no voting rights.

NOTE: Rule 7.1 is mandatory as printed with the insertion of Sectional representatives. The aim must be to have a Branch Committee that is representative of the membership but small enough to be able to meet at least monthly and operate effectively.

8. Branch General Meeting

1. *The Branch shall hold an Annual General Meeting in January/February.*

9. Branch Election Procedures

1. Nominations

No member shall be elected to any office without first having been nominated in writing by two members of the Branch one as a proposer, and the other as seconder, and with the candidate's written consent to the nomination.

5. Positions Vacant Between AGMs

(a) Officers

Any vacancies which may arise amongst the Officers between elections shall be filled under the procedures detailed above.

(b) Committees

Any vacancies which may arise on any Committee between elections, shall be filled by the highest unsuccessful candidate in the preceding election for the vacant position. In the event of the position being refused or there being no unsuccessful candidates an election shall be held.

21. Sections

- (a) *There shall be 4 sections of the Branch to represent members as follows;*
- (b) *Class 'C' section.....*

NOTE: The number of Sections is a matter for local decision. However the establishment of a Section based on original Branches is not acceptable. Ideally there should simply be one section per business (e.g. BT, Royal Mail, (including Quadrant), ParcelForce, SSL, Counters). Cognizance must also be given to the respective Procedural Agreements in each business.

Rule 21(b) is a mandatory rule and must be adopted as printed.

22. Section Officers

Each section shall elect, a Chair and Secretary under the procedures set out in rule 9.

NOTE: This rule is mandatory and must be adopted as printed.

23. Section Committees

A Section Committee shall be comprised of;

- (a) *The Section Chair and Secretary*
- (b) *Lay members of the Section elected in accordance with the procedures set out in Rule 9. To represent the following grades/workplace:*
- (c) *The Sectional Committee shall appoint from the Committee the agreed number of delegates to the Branch Committee (Rule 7.1(d)).*

NOTE: The number of lay Committee members is a matter for local decision but will depend on the size of the section. The same principle applies as to the Branch Committee – it should be small enough to enable regular and effective meetings but large enough to be fully representative.

Summary of Submissions

19. Mr Rafferty, on the Claimant's behalf, accepted that there was no express branch rule providing for the term of office of unit representatives but he submitted that there is an implied rule that the term of office is 12 months, having regard to custom and practice and the statement of the Union in correspondence that such elections are normally held every 12 months. He further submitted that the last election in Mr Carabine's branch for the position of unit representative for Belfast North and West DO was in June 2006 and that the Union was therefore in breach of its rules by having failed to organise an election for this position by June 2007. Mr Rafferty went on to argue that Mr O'Hara had acted correctly and in accordance with the rules by agreeing to hold such an election in February 2008 and that Mr Carabine had validly put his name forward as a candidate. In these circumstances, Mr Rafferty submitted that, by suspending an election that the Union was obliged to hold, Mr O'Hara had denied Mr Carabine's entitlement to stand for office in accordance with the rules and branch constitution, thereby causing the Union to breach rule 4.1(5) of the Rules of the Union. As to the suspension of the branch by the NEC on 25 July 2007, Mr Rafferty did not seek to argue that the suspension was unlawful or invalid. He submitted that the way in which the NEC had decided to impose the suspension caused section lay representatives to be treated differently to branch officers. In his submission, those arrangements required the branch rules dealing with the election of branch officers to be effectively suspended while the branch rules dealing with the election of lay

representatives remained in force. He supported this submission by reference to the accepted fact that the unit representatives were expected to continue to perform their representative functions for members at the work place.

20. For the Union, Ms Parker argued that the facts of this case do not come within the Certification Officer's jurisdiction under Section 108A(1) of the 1992 Act and that, as no election had taken place, a claim under Rule 4.1(5) was misconceived. She further argued that, as there was no express term of office for lay representatives, the Union could not be in breach of rule for failing to hold the election requested by Mr Carabine. Ms Parker also submitted that the Union had faced a unique set of circumstances at the relevant time which meant that all usual branch practices had to be suspended in order to address the extremely disturbing situation that existed.

Discussion and Conclusion

21. Mr Carabine's complaint is in the following terms:

"that on or around 6 March 2008, by a notice dated 27 February 2008 suspending the election in the CWU Northern Ireland No1 Branch for Unit Representative and Deputy Unit Representative, Belfast North and West DO, the Union acted in breach of Rule 4.1.5 of the rules of the Union by suspending the election and not allowing Mr Carabine's nomination for the position to go forward"

Rule 4.1(5) of the Rules of the Union provides that

"Members of the Union are entitled to stand for Union office in accordance with the Rules and Branch Constitution".

22. I do not accept the Union's submission that Mr Carabine's complaint is outside my jurisdiction. Section 108A provides as follows

(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are -

(a) the appointment or election of a person to, or the removal of a person from, any office;

(b) - (e)

23. Mr Carabine claimed that he was not allowed to stand in an election which he submits the Union was under an obligation to call and for which the Union had sought nominations. The substance of the complaint is clearly related to an election. That, however, is not the focus of section 108A(1) which looks to the nature of the rule allegedly breached. I must ask myself if the rule allegedly breached is one that relates to the election of a person to office. In my judgment, rule 4.1(5) plainly does so and this complaint is within my jurisdiction.

24. I also do not accept the Union's submission that there can have been no breach of rule 4.1(5) as there is no express period of office for lay representatives. As I have found in paragraph 8 above, the Northern Ireland No1 Branch had an implied rule that the term of office of section lay representatives is 12 months unless that period is extended for good reason by the NEC or branch committee in the reasonable exercise of its discretion. Accordingly, the Union does have a *prima facie* case to

answer as to why elections were not held for the positions of section lay representatives in and after June 2007.

25. Mr Carabine's difficulty emerges with the decision of the NEC to suspend the branch on 25 July 2007. For the purposes of this decision I accept that the NEC has the power to suspend a branch under rule 8.1(1)(b), which deals with the powers of the NEC and rule 6.1(1), which declares that branches are constituted under the authority of the NEC. The focus then shifts to the nature of that suspension. Was it a total suspension of the branch rules, as argued by the Union, or was it a partial suspension of those rules, as argued by the Claimant, leaving intact the rules relating to section lay representatives. The decision of the NEC on 25 July 2007 was to adopt the report of the General Secretary of 17 July. In that report, the General Secretary expresses his decision that the only way to achieve a lasting solution to the problems of the branch was to suspend it and administer it from CWU HQ. He also selects Mr O'Hara as the person to carry out the job of running the branch on behalf of CWU HQ, reporting directly to him. There is no reference to section lay representatives or unit representatives in the General Secretary's report. However, in his circular to branch members of 30 July 2007 he states that: "*The industrial relations representatives at work place level will continue to fulfil their roles as normal*". He makes no comment as to the application of the Union's democratic processes to these representatives, merely to their functions. Against this background, I find that the effect of the decision of the NEC was to suspend the whole of the rules relating to the operation of the Northern Ireland No1 Branch, including those rules relating to the election of lay representatives. This is not only clear from the words in the General Secretary's report and his circular to members, but it is consistent with the objective of removing areas of potential conflict within the branch whilst enabling the work place concerns of members to be addressed by allowing existing lay representatives to remain in post pending a longer term solution. The Industrial Relations Framework agreement was unaffected by this decision as it is not part of the rules of the Union. Accordingly, in my judgment, the Union was not in breach of rule by not holding further section lay representatives elections in June 2007 and was under no obligation to hold such elections in February 2008. It follows that Mr O'Hara's decision to suspend or, more realistically, cancel the election in question was one to which he could properly come without breaching any rule of the Union or the branch and that, on the facts of this case, Mr Carabine was not unlawfully denied any entitlement to stand for office. He had no such entitlement in February 2008.
26. For the above reasons I refuse Mr Carabine's application for a declaration that on or around 6 March 2008 the Union breached rule 4.1(5) of its rules by suspending the election in its Northern Ireland No1 Branch for Unit Representative, Belfast North and West DO, and not allowing his nomination for the position to go forward.

**David Cockburn
The Certification Officer**

